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IN THE

Supreme Court of the United States

NO. 510, OCTOBER TERM, 1925

D. E. WEAVER Chief of the Bureau of Inspection, in Pittsburgh of the DEPARTMENT OF LABOR AND INDUSTRY OF THE COMMONWEALTH OF PENNSYLVANIA, Appellant.

vs.

THE PALMER BROTHERS COMPANY.
a Corporation, Appellee,

BRIEF OF APPELLANT

Appeal from the District Court of the United States for the Western District of Pennsylvania.

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vs.

THE PALMER BROTHERS COMPANY, Appellee.

Appeal from the District Court of the United States for the Western District of Pennsylvania.

I

Statement of the Questions Involved and the manner in Which They Are Raised

THE QUESTIONS INVOLVED.

1. Does the Pennsylvania statute of June 14, 1923, No. 314, P. L. 802, which relates to mattresses, pillows, bolsters, feather beds, comfortables, cushions and upholstered furniture that are to be used on a couch or other bed for sleeping or reclining purposes; regulating the making, remaking, renovating, sterilizing, disinfecting, sale, leasing, delivering, and consigning thereof, and the possession thereof with intent to sell, lease, deliver or consign, and which

(a) prohibits the use of shoddy in the manufacture thereof;

(b) requires the submission to and the approval by the Commissioner of Labor and Industry of the process of sterilization and disinfection used in the manufacture of certain articles, and the posting of the permit therefor in the office or the place of business of the permittee; and

(c) requires the tagging of all articles covered by the Act, with tags furnished by the Commonwealth of Pennsylvania at the price of Ten and no/100 ($10.00) Dollars per thousand, the proceeds of the sales of said tags to be used to defray the cost and expense of inspection in the enforcement of said act;

violate the 14th Amendment to the Constitution of the United States, or is it a reasonable exercise of the police power of the Commonwealth of Pennsylvania?

2. Is a classification, in a police regulation, of articles of bedding which includes all articles of stuffed and filled bedding, arbitrary and unreasonable because it fails to include products of the textile industry such as blankets and cloth for clothing?

(Note: In the Bill of Complaint it is averred and in the Court below it was argued that certain portions of the act violate the Interstate Commerce Clause of the Constitution, but it is our understanding that this contention is no longer urged).

THE MANNER IN WHICH THE QUESTIONS ARE RAISED.

The Pennsylvania Act of Assembly, approved the 14th day of June, 1923, the full text of which appears as Exhibit "A" hereto, on Page 42, became effective on January 1st, 1924, and thereupon the Department of Labor and Industry, in the performance of its official duty, proceeded to the enforcement thereof. Palmer

Brothers Company, a corporation of the State of Connecticut, engaged in the manufacture and sale of comfortables, recognizing that its commodities were being manufactured and sold in the State of Pennsylvania, in violation of this Act, filed its Bill in Equity on January 29, 1924, against D. E. Weaver, Chief of the Bureau of Inspection in Pittsburgh, Pennsylvania, of the Department of Labor and Industry of the Commonwealth of Pennsylvania, to restrain the enforcement of said statute. An Interlocutory Injunction was asked for and after a hearing before three judges, in compliance with Section 266 of the Judicial Code, the Interlocutory Injunction was refused. From this judgment an appeal was taken by Palmer Brothers Company to this Court at No. 402, October Term, 1924, and the judgment of the Court below was affirmed by this Court (266 U. S. page 588). Thereupon final hearing was had on the Bill before F. P. Schoonmaker, United States District Judge for the Western District of Pennsylvania, and on March 9th, 1925, he filed his Opinion (Record page 151), the concluding paragraph of which is as follows:

> "We therefore, conclude on the whole case that only insofar as this statute absolutely prohibits the use of shoddy does it impinge upon the constitutional rights of the plaintiff, and that the defendant should be restrained only insofar as this statute absolutely prohibits the use of shoddy in the manufacture of bedding. We arrive at this conclusion in view of the admitted fact that sterilized shoddy is not dangerous to the public health. A decree may be submitted in accordance herewith."

A reargument was allowed and on April 21st, 1925, a further Opinion on the reargument (Record page 158), was filed, in which the Court adhered to its previous

Opinion. Pursuant to the Opinions, the Court below, on April 23rd, 1925, entered its final judgment (Record page 159), decreeing that insofar as the Pennsylvania statute of June 14, 1923, P. L. 802, absolutely prohibits the use of shoddy, as defined therein, in bedding, and provides that no person shall employ or use, in the making, remaking or renovating of any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture, any material known as shoddy, or any fabric or material from which shoddy is constructed, it violates the constitutional rights of the plaintiff and is unconstitutional and void, and enjoined and restrained the appellant, his attorneys, agents and employees and any and all persons whosoever, from enforcing, or in any manner attempting to enforce or carry out the provisions of said statute insofar as it prohibits the use of shoddy, and from instituting or causing to be instituted, or proceeding with any prosecution against the Palmer Brothers Company, or any of its customers, dealers or selling agencies in Pennsylvania, on account of selling, leasing, offering to sell or lease, or delivering or consigning in sale or lease, or having in possession with intent to sell, lease, deliver, or consign in sale or lease, any mattress, pillow, bolster, feather bed, comfortable, cushion, or upholstered furniture, in which shoddy is used, to which judgment and decree the defendant excepted, and at his request, a Bill of Exceptions was sealed. At the time of the allowance of this Appeal, the Court made an Order (Record page 164) modifying the decree in which the final decree was suspended during the pendency of this Appeal, except that portion which enjoins and restrains the appellant, his attorneys, agents and employees from instituting or causing to be instituted, or proceeding with any prosecution against Palmer Brothers Company, its customers, dealers and selling agencies in

Pennsylvania. On May 5th, 1925, assignments of error were filed (Record page 161), and on petition of the Appellant, this Appeal was allowed.

II.

Assignments of Error

And now, to-wit, May 5th, 1925, comes D. E. Weaver, Chief of the Bureau of Inspection in Pittsburgh of the Department of Labor and Industry of the Commonwealth of Pennsylvania, by its attorneys, E. Lowry Humes, George W. Woodruff, Attorney General of the Commonwealth of Pennsylvania, and James O. Campbell, Deputy Attorney General of the Commonwealth of Pennsylvania, and in connection with his petition for appeal in the above entitled case, files the following assignment of errors:

1. The Court erred in making the following Order and Decree:

"DECREE

"This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged and decreed as follows, viz:

"1. That the Act of Assembly of the Commonwealth of Pennsylvania, approved June 14, 1923 (1923 P. L. 802) relating to mattresses, pillows, bolsters, feather beds, comfortables, cushions, and upholstered furniture; regulating the making, remaking, renovating, sterilizing, disinfecting, sale, leasing, delivering, and consigning thereof, and the possession thereof with intent to sell, lease, deliver, or consign, insofar as it prohibits the use of shoddy in bedding by defining shoddy as any material which has been spun into yarn, knit or

woven into fabric, and subsequently cut up, torn up, broken up, or ground up, and by providing that no person shall employ or use in the making, remaking or renovating of any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture any material known as 'shoddy', or any fabric or material from which shoddy is constructed, violates the constitutional rights of the plaintiff, and is unconstitutional and void.

"2. That the defendant, D. E. Weaver, Chief of the Bureau of Inspection in Pittsburgh of the Department of Labor and Industry of the Commonwealth of Pennsylvania, his attorneys, agents and employees, and any and all persons whatsoever, be and they are hereby enjoined and restrained from enforcing or in any manner attempting to enforce or carry out the provisions of the Act of Assembly of the Commonwealth of Pennsylvania approved June 14, 1923 (1923 P. L. 802), insofar as the Act prohibits the use of shoddy or any fabric or material from which shoddy is constructed in the making, remaking or renovating of any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture; and that they are further enjoined and restrained from instituting, or causing to be instituted, or proceeding with any prosecution against The Palmer Brothers Company, plaintiff, or any of its customers, dealers, or selling agencies in Pennsylvania, on account of selling, leasing, offering to sell or lease, or delivering or consigning in sale or lease, or having in possession with intent to sell, lease, deliver or consign in sale or lease, any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture in the

making, remaking, or renovating of which shoddy is used, or any fabric or material from which shoddy is constructed."

2. The Court erred in refusing to dismiss the plaintiff's Bill of Complaint.

Wherefore, appellant prays that the Decree and Order of said District Court be reversed, and that the Plaintiff's Bill of Complaint be dismissed.

III.

Statement of Case

Palmer Brothers Company, a Connecticut corporation, engaged in the manufacture and sale of bed comfortables, filed its Bill of Complaint in the United States District Court for the Western District of Pennsylvania on January 29, 1924, to restrain the enforcement of the Pennsylvania Statute approved the 14th day of June, 1923, (Exhibit A, page 42). Under the provisions of this statute it became effective January 1, 1924. The Department of Labor and Industry of the Commonwealth of Pennsylvania had commenced the enforcement of the Act and had threatened to proceed against Palmer Brothers Company and their customers who were violating its provisions. The Bill of Complaint prayed that the statute be declared unconstitutional and void and that the defendant who is an officer of the Department of Labor and Industry of the Commonwealth of Pennsylvania and all other persons be enjoined from enforcing any of the provisions of the Act and from instituting or causing to be instituted any prosecutions or proceeding against Palmer Brothers Company or any of its customers, dealers or selling agencies within the State.

The plaintiff also sought an Interlocutory Injunc-

tion which, after a hearing under Section 266 of the Judicial Code was refused. Palmer Brothers appealed from the order refusing the Interlocutory Injunction to this Court at No. 402, October, 1924. On Dec. 8th, 1924, this Court affirmed the judgment (266 U. S. page 588).

After final hearing on the Bill and Answer, much testimony having been taken thereon, the District Court on April 23, 1925, entered a final judgment (Record page 159), from which this Appeal was taken, decreeing that insofar as this Act prohibits the use of shoddy in the articles of bedding designated in the Act, it was unconstitutional and void and enjoining the defendant, his attorneys, agents and employees and any and all persons whosoever, from enforcing or in any manner attempting to enforce or carry out the provisions of said Act insofar as it prohibits the use of shoddy and further enjoining them from prosecuting the plaintiff or any of its customers, dealers or selling agencies therefrom.

To this decree a Bill of Exceptions was sealed for the defendant and upon his petition (Record page 160) this appeal was allowed, the final decree being assigned as error (Record page 161).

The only question involved in this Appeal is as to whether or not the provisions of the Act in question which prohibit the use of shoddy in the articles of bedding designated therein, are so arbitrary, unreasonable and discriminatory, as to violate the 14th Amendment to the Constitution and whether the Legislature exceeded its power in prohibiting the use of shoddy instead of contenting itself with regulations, requiring its sterilization as a condition precedent to its use as a filling in mattresses, pillows, bolsters, feather beds, comfortables, cushions and upholstered furniture that are

to be used on a couch or bed for sleeping or reclining purposes.

IV.
Argument of Appellant

The Legislature of Pennsylvania enacted the statute under attack, which appears in full as Exhibit "A" hereof, on page 42, for the purpose of:

(A.) protecting the public health;

(B.) securing the public against fraud and deception.

That these are proper purposes for the exercise of the police power is admitted.

That bedding, on and under which man spends approximately one-third of his life, is a proper subject matter over which the police power should be exercised, has not been denied at any time, during the pendency of this case.

Stuffed articles of bedding, that are, by their very form and nature, so constructed as to conceal their contents from the view and observation of the public and the manufacture of which may be accomplished in such a way and with such skill and secrecy as to baffle ordinary inspection, provide such opportunity for the perpetration of fraud and deceit upon both the consuming public and the public authorities as to make it an especially appropriate and proper subject matter over which the police power should be exercised.

Protecting Public Health

The Court below, in its Opinion, recognizes the purpose of the Act as proper and that the subject matter thereof bears a reasonable relation to the purpose of protecting the public health, in the following words:

"* * * there is a dispute as to whether shoddy, as now used as a filler for mattresses and comfortables, is a menace to health. Much testimony was introduced by the plaintiff from eminent authority to show that it was not a danger to public health. On the other hand, testimony was offered by the state authorities to show that shoddy was a menace to public health and that twenty-seven states had passed regulations as to its use, some going so far as to prohibit absolutely the use of shoddy, as in the Pennsylvania statute. In view of the different opinions which the authorities hold on this subject, we think that the legislative judgment must control." (Record page 154).

SECURING THE PUBLIC AGAINST FRAUD AND DECEPTION

The Court below, in discussing the tagging and labeling features of the statute, also recognizes that the prevention of fraud and deception is one of the purposes of this legislation, and that its provisions have a reasonable relation to that purpose, when it says:

"To prevent fraud and deception is one of the universally recognized purposes for which police power may properly be invoked. We think that the evidence that was introduced as to tags and labels that appeared upon comfortables which the plaintiff has already sold within the state of Pennsylvania is sufficient to justify the regulations of the Pennsylvania statute in this regard. The label which the plaintiff put on a shoddy-built comfortable offered in evidence in this case was quoted 'new dark cotton carded' is, as we view the case, a mis-statement of facts. It is a fair illustration of the necessity for the requirements of the Pennsylvania statute." (Record page 157).

It is respectfully submitted, however, that the Court erroneously failed to declare that the provisions of the Act prohibiting the use of shoddy in stuffed articles of bedding, had as direct a relation to the legislative purpose of securing the public against fraud and deception, as it had to the protection of the public health.

It being undisputed that the Pennsylvania Legislature, in enacting this statute, exercised the police power for proper purposes and over a subject matter which bears a reasonable relation to those purposes, the due process clause of the 14th Amendment is not violated. The equal protection of the law's clause cannot be violated by this statute unless the classification of articles of bedding embraced within its subject matter is arbitrary and unreasonable. The court below, while holding that the classification is arbitrary and unreasonable because it fails to include blankets and cloth for clothing in the same classification with mattresses, pillows, bolsters, feather beds, comfortables, cushions and upholstered furniture that are to be used on a couch or bed for sleeping or reclining purposes, disregards this conclusion in reaching its judgment and declares the act unconstitutional insofar as the prohibition of the use of shoddy is concerned "even if classification is a proper one."

History of Legislation

The evil which the Legislature of the State of Pennsylvania sought to reach and remedy was the unhealthy and unsanitary condition that existed in the bedding industry, and the unhealthy and unsanitary product which was coming into the hands of the consuming public, as well as the fraud and deception which was being practiced by those engaged in that branch of the bedding industry that was manufacturing and selling

articles of bedding that were stuffed and filled with material, the character and nature of which was necessarily concealed from the consuming public because of the very form and nature of the article itself. Much knowledge of this evil was and is a part of the common knowledge of mankind. The public prints and the bulletins and publications of health, civic and trade organizations, many of which were offered in evidence at the trial of the case, had brought this evil to the attention of the public. (Record page 136). As early as 1909 legislative action was directed against these evils in the widely separated states of New York and Washington. In 1911 the Ohio Legislature recognized the evil. Minnesota, Wisconsin and Pennsylvania enacted laws to meet this evil in 1913. In 1915 the States of Alabama, California, Colorado, Connecticut, Illinois and Montana proceeded to invoke their police power to abate this evil, and Pennsylvania and Wisconsin, profiting by their experience under their enactments of 1913, amended their laws. Indiana, Michigan and Tennessee recognized the necessity of protecting their citizens against the abuses in this industry in 1917, and Louisiana and New Jersey legislated on the subject in 1918. In addition, Illinois, Iowa, Kansas, Kentucky, Massachusetts, Missouri, North Carolina, Oregon, Utah, Oklahoma, and the municipal authorities of the City of Chicago, each undertook to reach this evil by the exercise of their police powers prior to the enactment of the Pennsylvania Statute of June 14th, 1923, which is under consideration in this case. The Pennsylvania statute of 1913 and its amendments related only to mattresses and it absolutely prohibited the use of shoddy in the manufacture thereof. With the advantage of ten years' experience in the enforcement of that Act, in an effort to eliminate the evils in the bedding industry, as well as a knowledge of the activities in 25 other states where the police power

had already been invoked for the same purpose, the legislature of Pennsylvania, in estimating the extent and character of the evil which confronted it, enacted the Act of 1923, and in this Act, extended their regulations to all articles of stuffed and filled bedding, including comfortables, and with a view of making possible the effective enforcement of the Act, prescribed a new method of tagging and labeling. Since the enactment of the Pennsylvania statute complained of, the State of Maryland has adopted a similar law, and the city of Spokane, Washington, has passed an ordinance on the same subject.

The growth of the bedding industry and the development of the practices which led to such a general recognition of the existence of evil as to require the exercise of the police power by the Legislatures of twenty-seven states and two large cities within a period of fourteen years, demonstrates the wisdom of the words of this court in the case of *Holden vs. Hardy,* 169 U. S. 366, 18 Sup. Ct. 383-385:

> "* * * in passing upon the validity of state legislation under that (14th) amendment, this court has not failed to recognize the fact that the law is, to a certain extent, a progressive science; that, in some of the states, methods of procedure which, at the time the Constitution was adopted, were deemed essential to the protection and safety of the people, or to the liberty of the citizens, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals, or of classes of individuals, had proved detrimental to their interests, while upon the other hand, certain other classes of persons (particularly those engaged in dangerous or

unhealthy employments) have been found to be in need of additional protection."

It is true that all of the twenty-seven states have not approached the common evil in exactly the same manner, nor undertaken to apply the same remedy. The methods adopted in the several states vary as the judgments of men vary. The development of the evils complained of in the bedding industry and the extent and far-reaching effect of the evils themselves have been variously appraised. The evils existing in the industry varied in the different states, depending as to whether it was a producing or a consuming state. Consequently, Legislatures approached the evil from different viewpoints, and with varying convictions as to the extent of the evil and the facility with which it could be abated. This situation was recognized by this court in *Holden vs. Hardy,* 169 U. S. 366, 18 Sup. Ct. 383-388, when it said:

"* * * a large discretion 'is necessarily vested in the Legislature, to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests.' *Lawton vs. Steele,* 152 U. S. 133-136, 14 Sup. Ct. 499."

The fact remains, that of the twenty-seven state legislatures which have found it necessary to exercise their best judgment and discretion in legislating upon this admittedly proper subject, twelve states and the City of Spokane, Washington, have prohibited the use of shoddy in the bedding material covered by their statutes, and those sections of the several acts referred to, are printed as Exhibit "B" on page 51 of this Brief. It is therefore apparent that the questions raised in this case are more far reaching in their effect than is evident on the face of the record, and that the affirma-

tion of the judgment of the Court below would have the effect of striking down the legislative enactments of a large number of states.

Evidence Submitted to the Court

Much testimony was submitted by the appellee and although the assignments of error do not involve the admissability of this evidence, it is respectfully submitted that the particular practice of a given manufacturer, whether he be the plaintiff or a stranger to the record, is neither relevant or material to the issues involved. Much of this testimony relates to the practices, methods and facilities of the plaintiff. One might well suspect, from reading this testimony, that the plaintiff was on trial charged with questionable practices in the conduct of its business, and a reading of the Court's Opinion leaves one under the impression that the Court approached this question on the theory that the statute complained of was an act regulating the use of shoddy as an article of commerce. That the manufacture and sale of comfortables constitutes only a minor portion of the bedding industry covered by the act, yet an indispensible part thereof in a police regulation intended to cover articles of stuffed bedding, if the regulation is to stand the classification test, seems to have been entirely disregarded. In this testimony, however, is found complete vindication of the purposes of the Pennsylvania statute and the direct relation which its regulations bear to those purposes. The character of the material from which the shoddy used in the bedding industry is made, and the carelessness with which it is gathered is evidenced by the following testimony of Frank Palmer who is in charge of the mechanical department of the Palmer Brothers Company, and who testified as follows:

"Q. Before you put the rags into this sterilizer, is there any process of assortment?

A. Yes, the rags are sorted after the bales are opened.

Q. What do you put aside?

A. All manner of stuff that we cannot pick.

Q. What is that?

A. Rubbers, some belting sometimes, hats are too hard, rope." (Record page 66).

During the trial of the case and in its argument in the court below, great emphasis was placed upon the fact that shoddy is a well known and generally used article of commerce, and the Court, in its Opinion emphasizes this fact (Record page 151) and much testimony was introduced relative to the use of shoddy in the textile industry. The testimony, however, clearly establishes, that there is an absolute difference between the shoddy of the textile industry and the shoddy that is used in the stuffed and filled bedding industry.

Samuel C. Dean, Superintendent of the Winchester plant of the American Woolen Company, a witness for the plaintiff, who was permitted to testify at length with reference to the use of shoddy in the textile industry, admitted this difference as follows:

"Q. As you just remarked, the shoddy that is used in the bedding industry is an entirely different grade of shoddy than the shoddy that is used in the textile industry?

A. Absolutely yes." (Record page 96).

The uncontradicted testimony of Edward B. Joachim, a witness for the appellant, was as follows:

"The shoddy that is used in the textile industry is shoddy that can be reclaimed, principally through being carbonized to get the wool out of it, and it is a long fibre, capable of being respun again; but this stock (referring to the shoddy used in the bedding industry) cannot be respun again; it is too short; it is a waste. You take a man in the textile business and you tell him that this is shoddy, and he will say 'No, that is only sweepings.' No, we don't consider that shoddy." (Record page 127).

James A. Newlands, a chemist and bacteriologist, called by the plaintiff, testified inter alia as follows:

"Q. What I am asking you is this: Your knowledge of the material that enters into the bedding materials convinces you, does it not, that bedding materials generally require very careful sterilization and very careful safeguarding, in order to protect public health?

A. Yes, sir, that is true.

Q. The use of bedding material that contains any unhealthy or questionable material would be very dangerous to the public health, would it not?

A. If it were used without such treatment. (Record pages 71 and 72.)

* * * * * * * *

Q. Is it not a fact that public health would be endangered if material such as you saw put in that sterilizer was ground up and not sterilized at all?

A. Yes, there is a possibility of infection." (Recor page 74.)

Howard Palmer, the Secretary of Palmer Brothers

Company, admitted in his testimony, that even in their own establishment, they do not sterilize the shoddy which they call "new shoddy", (Record page 63) and the testimony of George S. Palmer, the president of Palmer Brothers Company justifies the conclusion that the plaintiff is undertaking to strike down legislation enacted to meet an admitted and unquestioned evil in the bedding industry, by adopting in his plant at the eleventh hour, a process of sterilization. He testified as follows:

"Q. Was there ever any attempt until recently, say, to sterilize or disinfect shoddy, in so far as the manufacture of comfortables is concerned?

A. Not that I know of.

Q. Was there ever in your plant?

A. Not until recent years." (Record page 26).

The only effective means available, for protecting the public and enforcing the law is by inspection and that inspection must be accomplished, in the case of commodities manufactured outside of the state of Pennsylvania, in the retail markets of the state, and the testimony clearly establishes that it is impracticable and impossible to determine by such inspection as can be made in these retail markets, whether or not shoddy has been actually sterilized. James A. Newlands, a bacteriologist, one of the plaintiff's witnesses admitted that it would not be possible for an inspector visiting retail establishments having stocks of bedding materials such as comforters, to determine by any inspection in that store, whether or not the material had ever been sterilized. (Record page 74).

Mr. Edward B. Joachim, the chief of the Bedding Division of the Department of Labor and Industry, testified as follows:

"Q. Is it ever possible to tell by inspection, whether the material has been properly sterilized or not, after it goes into retail markets of Pennsylvania?

A. No sir, no man can do that. It is absolutely impossible, because the very next day it may have come in contact with some animal or something like that, and it is impossible to determine that thing. The claim is made that it is sterilized, and it isn't, half the time." (Record page 134 and 135.)

Mr. Joachim further testified as follows:

"Owing to the impossibility, after a quantity of rags has been ground up, to determine whether they were new rags or old rags, it was deemed advisable, in order to have conditions safe for health and protect the human against the introduction of filth and disease, that shoddy should be prohibited. We had a great deal of difficulty in getting proper statements on articles of the character of filling material. There was a universal practice at that time that this shoddy was marked all new cotton, and I was able to prosecute quite a number of individuals in Philadelphia because they had taken the gunnysacking which surrounds cotton bails in which the cotton is shipped, and in which all waste materials are shipped, and had ground that up and called that cotton, regardless of the fact that these coverings had been used in transportation in dirty freight cars and in storage in damp cellars and there was no sterilization and disinfection. * * * I can testify that I never saw a truthful statement made on any article which was filled with shoddy." (Record page 123.)

In the trial of the case, there was offered in evi-

dence, a comfortable manufactured by the plaintiff which was filled with shoddy but which bore the label "New dark cotton carded", and the evidence disclosed that in spite of the label it was all shoddy and contained more than 50% wool shoddy. (See analysis Record page 145.)

It was this evidence which led the court below to declare in its Opinion as follows:

> "We think that the evidence that was introduced as to tags and labels that appeared upon comfortables which the plaintiff has already sold within the state of Pennsylvania is sufficient to justify the regulations of the Pennsylvania statute in this regard. The label which the plaintiff put on a shoddy-built comfortable offered in evidence in this case was quoted 'new dark cotton carded' is, as we view the case, a misstatement of facts. It is a fair illustration of the necessity for the requirements of the Pennsylvania statute." (Record page 157.)

Classification in the Statute.

It is difficult to reconcile the conclusion of the Court with the reasoning found in the Opinion. The Court finds, in view of the different opinions as to whether shoddy, as now used as a filler for mattresses and comfortables, is a menace to health, that "the legislative judgment must control" (Record page 154), thereby admitting that legislation as to the use of shoddy in the bedding industry bears a relation to the public health. The Court however, proceeds to condemn the Act because:

> "the classification sought to be established is not a proper one. It is unfair and does not really cover all members of the same class. It does not

apply to shoddy used in a blanket which is equally an article of bedding with mattresses and comfortables; and all these articles, insofar as they use shoddy, are in the same category so far as hazard to the public health is concerned. If shoddy is dangerous when contained in articles which a man uses at night when in bed, is not the shoddy-made garments which he wears in the daytime equally dangerous? This act in its present form undoubtedly discriminates unjustly against the person who uses shoddy for mattresses and comfortables, in favor of the one who uses it for blankets and clothing, all of which come intimately in contact with the human body, and if infected, would each be a source of danger to public health. * * * There is no justification for so arbitrary a distinction". (Record page 154 and 155).

It is apparent from this reasoning of the Court below that the Court approached this case with the thought in mind that the subject matter of the Act in question was shoddy rather than the bedding industry. Otherwise there could be no justification for holding that cloth for clothing should be classified with articles of bedding. The Court's contention that blankets must be classified with articles of stuffed and filled bedding, raises a somewhat different question. Blankets are a product of the textile industry. They are manufactured by a process absolutely different and entirely distinct from the process used in the manufacture of articles of stuffed and filled bedding and they are marketed in a different form. The shoddy and other material which is used in their manufacture, is first spun into thread or yarn. That thread or yarn is woven into a blanket. The blanket is subjected to what is known as the fulling process and is washed and scoured, and unless a white blanket, made of the washed and

scoured yarn, is wanted, it is dyed. Thereupon it goes into the retail markets. At all times it can be readily handled and inspected. It can be and frequently is subjected to the purifying effect of the sun's ray, and it can be and frequently is washed and laundried, as other textiles are. On the other hand, articles of stuffed and filled bedding have their contents secreted and concealed within ticking and covers that are well and readily calculated to conceal the nature and character of their contents and to baffle inspection, (unless the article itself is damaged in the inspection process) and to provide easy opportunity for the practice of all sorts of fraud and deception upon the consuming public. The testimony of Samuel C. Dean, Superintendent of the Winchester plant of the American Woolen Company, offered by the plaintiff, shows the processes used in the textile industry where shoddy is reclaimed and establishes the very clear distinction between blankets and other textiles and the commodities covered by the statute under consideration. He testified as follows:

"Q. I mean, it is spun into yarn and then woven into cloth?

A. Correct.

Q. What processes does that go through before it finally reaches the market?

A. After it is taken off the loom, it is inspected for specks, and imperfect places, and so forth. It is fulled—in other words, washed, scoured; that is, in our particular line of trade; it is not in all trades.

Q. I am speaking about the business that you are familiar with, and that you are handling?

A. Yes.

Q. It is scoured?

A. It is what we call 'fulled'. That brings it up and cleanses it. It is then folded up and inspected and sent away to the trade.

Q. Do you sterilize these clips and the rags that come into your place before you use them?

A. No, sir.

Q. You don't even sterilize them?

A. No.

Q. After it is spun into cloth, what happens to it?

A. I don't just understand what you want. It is finished.

Q. This is spun into yarn?

A. Yes.

Q. And it is scoured?

A. Yes, after it is in the piece of goods.

Q. It is not scoured until after it is in the piece?

A. No.

Q. After it is spun into yarn, it is woven into cloth?

A. Yes." (Record page 98.)

We respectfully submit that the distinction between blankets and articles of stuffed bedding is so clear that a classification which excludes blankets is not only reasonable, but is absolutely essential to intelligent regulation and supervision.

LEGISLATIVE DISCRETION IN MAKING CLASSIFICATION

It has been repeatedly held by this Court that the state legislatures have a wide discretion in classifying subjects for police regulation.

> "Legislatures, as we have seen, have the constitutional power to make unwise classification." *Heath & Milligan Mfg. Co., vs. North Dakota,* 207 U. S. 338, 28 Sup. Ct. 114, 120.

> "In order to sustain a classification made by the legislature, the court need not be sure it has reached the correct and complete explanation of the reasons for the classification; but the classification must stand, unless it is demonstrated beyond a reasonable doubt that it could not possibly be explained on reasonable grounds." Syllabus in *Ward and Gow vs. Krinsky,* 259 U. S. 503, 42 Sup. Ct. 529.

> "Classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis, * * * and that in all cases it must appear, not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification,—and is not a mere arbitrary selection.'" *Connolly vs. Union Sewer Pipe Co.,* 184 U. S. 540, 22 Sup. Ct. 431, 439, 440.

EQUAL PROTECTION OF THE LAWS.

Inasmuch as the Pennsylvania legislation made a classification "which bears a reasonable and just relation to the act" in question, it cannot be seriously con-

tended that the appellee or any other person has been denied the equal protection of the law. The prohibitions, restrictions, regulations, penalties and burdens fall equally on all persons similarly situated.

This Court, in the case of *Magoun vs. Illinois Trust and Savings Bank,* 170 U. S. 283, 18 Sup. Ct. 594, 598, said:

> "The clause of the Fourteenth Amendment especially invoked is that which prohibits a state denying to any citizen the equal protection of the laws. What satisfies this equality has not been, and probably never can be, precisely defined. Generally it has been said that it 'only requires the same means and methods to be applied impartially to all the constituents of a class, so that the law shall operate equally and uniformly upon all persons in similar circumstances.' *Kentucky Railroad Tax Cases,* 115 U. S. 321, 6 Sup. Ct. 57. It does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed. *Hays vs. Missouri,* 120 U. S. 68, 7 Sup. Ct. 350. Similar citations could be multiplied. But what is the test of likeness and unlikeness of circumstances and conditions? These expressions have almost the generality of the principle they are used to expound, and yet they are definite steps to precision and usefulness of definition, when connected with the facts of the cases in which they are employed. With these for illustration, it may be safely said that the rule prescribes no rigid equality, and permits to the discretion and wisdom of the state a wide latitude, as far as interference by

this court is concerned. Nor with the impolicy of a law has it concern. Mr. Justice Field said in *Mobile vs. Kimball,* 102 U. S. 704, that this Court is not a harbor in which can be found a refuge from ill advised, unequal and oppressive state legislation. And he observed in another case: 'It is hardly necessary to say that the hardship, impolicy, or injustice of state laws is not necessarily an objection to their constitutional validity.'"

In the case of *Powell vs. Commonwealth,* 127 U. S. 678, 8 Sup. Ct. 992, 997, this court said:

> "The objection that the statute is repugnant to the clause of the Fourteenth Amendment forbidding the denial by the state to any person within its jurisdiction of the equal protection of the laws is untenable. The statute places under the same restrictions, and subjects to like penalties and burdens, all who manufacture or sell, or offer for sale, or keep in possession to sell, the articles embraced by its prohibitions, thus recognizing and preserving the principle of equality among those engaged in the same business. *Barbier vs. Connelly,* supra; *Soon Hihg vs. Crowley,* 113 U. S. 703, 5 Sup. Ct. Rep. 730; *Railway Co. vs. Humes,* 115 U. S. 519, 6 Sup. Ct. Rep. 110."

It is apparent, however, that even were the Court right in its findings that the classification is arbitrary, the conclusion reached by the Court is fatally defective. The conclusion of the Court is that the only provision of the Act which violates the 14th Amendment is the provision which absolutely prohibits the use of shoddy in the articles covered by the Act. Yet every provision of the Act is based upon the same classification and therefore if the classification is arbitrary the equal protection of the laws clause of the 14th Amendment is

violated by the entire Act, and the entire Act must fall.

Basis of Judgment of Court Below

The Court below, after deciding that the classification is arbitrary drops that subject and ignores the logical conclusion to be drawn from the adjudication and apparently denounces the statute on another ground by propounding the following interrogatory and findings:

> "But, even if classification is a proper one, is it reasonable to prohibit absolutely the use of shoddy as a filler for mattresses and bed comfortables, when it is conceded that such shoddy may be rendered harmless by well known process of sterilization which is now in general use? This brings to the second contention of the defendant, who justified this absolute prohibition on the ground that even conceding the fact that sterilization is effective to render shoddy harmless so far as concerns public health, it is impracticable to permit the use of sterilized shoddy, for the reason that the character of mattresses and comfortables makes it impracticable, after they have been made, to inspect them for the purpose of ascertaining whether the shoddy filler has been sterilized. If that is a valid objection, it applies equally to the present act. It is just as difficult now to inspect a comfortable for the purpose of ascertaining whether shoddy has been used as filler as it would be to inspect in order to ascertain whether sterilized shoddy were used as filler. The same complaint might also apply to the provision of the statute which permits the use of second-hand material other than shoddy as filler for mattresses and comfortables, provided they have been properly sterilized. It is unreason-

able to say: 'We will permit sterilized second hand materials, but not sterilized shoddy, when both may be inspected with equal facility when bound up in a mattress or comfortable.'" (Record page 155.)

It is difficult to understand the Court's position on this point. While it undoubtedly relates only to an alleged inconsistency in the remedies applied by the legislature to the various evils recognized in the stuffed bedding industry, the Court has apparently attributed to it, unwarranted significance. The appellee believes that the Court was of the opinion that the 14th Amendment required the legislature to apply exactly the same regulations to every article covered by the statute, regardless of the varying degrees of evil and danger, connected with their use, respectively.

Under the definitions in the Act, second-hand materials are materials whose identity and prior use can be readily determined and, as known and recognized in the industry, is confined almost entirely to material formerly used as bedding and reused only in remaking and renovating. Except when remade and renovated for the owner, the use of this material is limited. Shoddy, however was, and where still permitted, is extensively used and in the process of manufacture, its identity and prior use is absolutely destroyed and its very nature facilitates the practice of fraud and deceit, through which the public can easily be victimized both physically and financially.

In this connection the following testimony of Howard Palmer, the Secretary of the Appellee company, is conclusive:

"Q. • • • Now I am asking you if you can determine from inspection, or if anyone can, the prior use that that (shoddy) material has had?

A. No, indeed." (Record page 57).
and in discussing the contents of a shoddy filled comforter George S. Palmer, the President of the Company, said, "We never know the exact contents". (Record page 36).

If we correctly interpret the view of the Court below on this point, the revision of the Act to meet its objections would still leave us with an unconstitutional statute, because of the absence of a requirement that new material be sterilized, and owing further to the fact that it is absolutely necessary to regulate the use of feathers as a filling for bedding in a different way than some other materials are regulated. We respectfully submit that the fallacy of this feature of the Court's opinion is apparent.

The supervision which the judiciary may exercise over the act of the legislature relates to the purpose thereof, the relation which the subject matter has to the purpose and the question as to whether or not the burdens fall equally on all persons similarly situated. The exact character of the burden, in other words, the remedy prescribed for the evil sought to be abated, is for the legislature.

Legislative Power to Determine Remedy

The question as to whether or not the Legislature of the Commonwealth of Pennsylvania exercised good judgment in enacting the measure complained of is immaterial for the purposes of this case.

> "At any rate, exact wisdom and nice adaptation of remedies are not required by the Fourteenth Amendment, nor the crudeness nor the impolicy nor even the injustice of state laws redressed by it."

Heath and Milligan Manufacturing Company vs. North Dakota, 207; U. S. 338, 28 Sup. Ct. 114, 119.

"If the subject for the exercise of police power is legitimate, the Legislature may adopt such measures as are necessary to make its action effective, and they may be either regulatory or prohibitory, and either in the form of general directions or detailed measures against a particular article. The power of the Legislature in the proper exercise of its police power to prohibit an article is not effected because the article may be truthfully labelled or that the law will result in destroying the value of property devoted to the manufacture of the article."

State vs. Emery, 189 N. W. 564.

"The legislature is entitled to estimate degrees of evil, and to adjust its legislation according to the exigency found to exist. And, applying familiar principle, it cannot be said that the legislature exceeded the bounds of reasonable discretion in classification when it enacted the prohibition in question relating to foods and compounds sold as food preservatives."

Price vs. Illinois, 238 U. S. 446, 35 Sup. Ct. 892, 895.

A RULING CASE

The Appellant respectfully urges that this case is clearly ruled by the case of *Powell vs. Commonwealth,* 127 U. S. 678, 8 Sup. Ct. 992, 995. In that case the Pennsylvania Act of May 31st, 1885, prohibited the manufacture or sale, or possession with intent to sell, of oleomargarine, and this court, in sustaining the Act, said:

"'Every possible presumption,' Chief Justice Waite said, in speaking for the Court, in *Sinking Fund* cases, 99 U. S. 718, 'is in favor of the validity of a statute and this continues until the contrary is shown beyond a rational doubt. One branch of the government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule.' * * * Whether the manufacture of oleomargarine, or imitation butter, of the kind described in the Statute, is or may be conducted in such a way, or with such skill and secrecy, as to baffle ordinary inspection, or whether it involves such danger to the public health as to require, for the protection of the people, the entire suppression of the business rather than its regulation in such manner as to permit the manufacture and sale of articles of that class that do not contain noxious ingredients, are questions of fact and of public policy which belong to the legislative department to determine. And as it does not appear upon the face of the statute, or from any facts of which the court must take judicial cognizance, that it infringes rights secured by the fundamental law, the legislative determination of those questions is conclusive upon the courts. It is not a part of their functions to conduct investigations of facts entering into questions of public policy merely, and to sustain or frustrate the legislative will, embodied in statutes, as they may happen to approve or disapprove its determination of such questions. The power which the legislature has to promote the general welfare is very great, and the discretion which that department of the government has, in the employment of means to that end, is very large. * * * The legislature

of Pennsylvania, upon the fullest investigation, as we must conclusively presume, and upon reasonable grounds, as must be assumed from the record, has determined that the prohibition of the sale, or offering for sale, or having in possession to sell, for purposes of food, of any article manufactured out of oleaginous substances or compounds other than those produced from unadulterated milk, or cream from unadulterated milk, to take the place of butter produced from unadulterated milk, or cream from unadulterated milk, will promote the public health, and prevent frauds in the sale of such articles. If all that can be said of this legislation is that it is unwise, or unnecessarily oppressive to those manufacturing or selling wholesome oleomargarine as an article of food, their appeal must be to the legislature, or to the ballot box, not to the judiciary. The latter cannot interfere without usurping powers committed to another department of government."

We respectfully submit that the correct rule in this case can readily be prescribed by substituting in the opinion of this Court in the Powell case, the prohibited article in the statute under consideration for the prohibited commodity in that case. The court below undertook to distinguish between the cases of *Powell vs. Pennsylvania,* 127 U. S. 678 among others and the case at bar, as follows:

"In those cases there was no possibility of the character of the commodities in question being changed by sterilization so as to render them harmless. Those cases there are not parallel with the instant case, where all possible harmful qualities of shoddy may be removed by sterilization.". (Record page 156.)

There is no distinction between the cases. The Court below entirely overlooked the fact that the Court in the Powell case held that the question of the wholesomeness of the oleomargarine was immaterial. In the oleomargarine case a much stronger case against the statute is presented, if the theory and contention of the Court below is correct, than in the case at bar, for in the former there is and can be no dispute but that a perfectly pure, wholesome and healthful product can be made. In spite of this fact this Court held it immaterial. In the case of shoddy, the evidence clearly establishes that the protection of public health requires its regulation and at least its sterilization and the Court below recognizes the propriety of such a requirement and that fraud and deception is practiced in the handling of it.

The Powell case did not sustain a prohibition of the sale of unwholesome oleomargarine. It prohibited the sale of oleomargarine regardless of its wholesomeness because it was a commodity the manufacture of which was conducted in such a way and with such secrecy as to baffle ordinary inspection, thereby making it possible to impose upon the public by selling an unwholesome article and making it difficult for the people to know just what they are buying. The inspection of oleomargarine is a much simpler process than the inspection of articles of stuffed bedding. Access can be easily gained to the former, while the contents of the latter cannot be even visualized without the damage and possible destruction of the covering of the article within which is concealed and secreted the material which admittedly requires inspection and the evidence conclusively establishes that even after gaining access thereto "ordinary inspection" will not disclose whether or not the absolutely necessary process of sterilization has been

applied. Certainly the distinctions in these two cases are without a legal difference.

The court below, in repudiating the Powell case as a ruling case, adopts as authority for its judgment the opinion of the Supreme Court of the State of Illinois, in the case of *People vs. Weiner,* 271 Ill., 74, (L. R. A. 1916, C. 775).

The case at bar is clearly distinguished from that case, and none of the objections raised by the Illinois Court can be directed against the Pennsylvania statute. In the Illinois case, a dealer sold a second hand felt mattress. The statute prohibited the use of second hand material in making any mattress, quilt or bed comfortable, and the sale thereof. Another section, however, provided that:

> "Nothing herein shall prohibit any person from remaking or renovating, or employing others to remake or renovate for him, any mattrass (mattress), quilt, or bed comforter for his own use, but all material used for filling in the remaking or renovating of any mattrass (mattress), quilt or bed comforter, together with the cover thereof, shall be first sterilized,"

and tagged. The court held that the act permitted persons to do for their own use, provided the materials were sterilized, that which it denied to the manufacturer and dealer. In the case at bar there is no such discrimination between individual citizens and manufacturers or dealers. Neither is there a prohibition against either the use or sale of second hand bedding if it is sterilized, as required by the act, but on the contrary, the act expressly provides for the very thing that the Illinois court declared to be proper and necessary. The second objection of the court to the statute was that it was class legislation because the act was confined

to mattresses, quilts and bed comforters, and did not include and apply to pillows, and that consequently, it made a discrimination between the manufacturers of, and dealers in these several articles. No such discrimination exists in the Pennsylvania statute, as it covers all of these articles.

It is interesting to note that the Illinois court denounced the classification in that case because it failed to include pillows which are stuffed articles of bedding. No suggestion is made that blankets should have been included to avoid an arbitrary classification as is contended in the case at bar.

The case of *Hannibal & St. Joseph R. R. Co. vs. Husen* 95 U. S. 465, is also cited at length by the court as supporting its judgment. The statute under consideration in that case was held to violate the Interstate Commerce clause of the Constitution and the 14th Amendment was not involved. In the case at bar the Court below denies emphatically that the Pennsylvania statute violates the Interstate Commerce Clause yet cites the Husen case as sustaining its conclusions under the 14th Amendment. Undoubtedly it was erroneously cited.

Opinion of the Court Below Based on Erroneous Premise

We believe that the error made by the Court below is due to the faulty premise on which its adjudication is based. This premise is set forth by the Court below in its Opinion, as follows:

> "The plaintiff, in the instant case, has invoked constitutional protection, and it therefore becomes the duty of the court to determine whether the challenged provisions are reasonable or not. *Meyer vs. Nebraska* supra: (262 U. S. 396); *Welch vs.*

Swasey, 214 U. S. 91 (105); *Dobbins vs. Los Angeles,* 195 U. S. 223 (226); *Connolly vs. Union Sewer Pipe Co.* 184 U. S. 540 (556); *Lawton vs. Steele, supra;* (152 U. S. 133) (137); *Burns Baking Co. vs. Bryan* supra: (264 U. S. 504) (513). (Record page 153.)

It is respectfully submitted that the Court misinterpreted the scope of its duty. The question for judicial determination is not the reasonableness of the challenged provisions, which in this case is the entire act (for the plaintiff in his bill denounces it in its entirety), but the more limited question as to whether the challenged provisions had a reasonable relation to the purposes of the Act. That the cases cited by the Court deny rather than establish the large discretionary judicial power which the Court below assumed to exercise, is shown by the following analysis of the cases themselves.

The case of *Meyer vs. Nebraska,* 262 U. S. 390, involved the Nebraska statute prohibiting teaching in anything but the English language, and the court said:

> "The established doctrine is that this liberty may not be interfered with under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect. * * * There seems no adequate foundation for the suggestion that the purpose was to protect the child's health by limiting his mental activity."

In other words the Act was denounced because it had no purpose that the state was competent to legislate upon in the exercise of the police power. In the case at bar, the purpose was admittedly within the

police power, and the legislation itself bears a positive relation to that purpose.

The case of *Welch vs. Swasey,* 214 U. S. 91, involved the validity of a Massachusetts statute restricting the height of buildings in Boston, and classified the city into commercial and residential districts, and invoked different requirements in the respective districts, and the court held that this statute had relation to the purpose sought to be accomplished by the legislature, namely, "safety, comfort and convenience of the people." In this case the court also justified the legislature in being influenced by "æsthetic" reasons. A casual glance at the shoddy material in evidence in the case at bar suggests that æsthetic reasons, in addition to the more potent ones, might very properly influence the legislation in this case.

Dobbins vs. Los Angeles, 195 U. S. 223 grew out of an ordinace prohibiting the erection of gas plants in certain districts, and under it, it was sought to prevent the completion of a gas plant which had already been authorized under the then existing law by the proper municipal authorities, after the gas company had expended large sums in such construction. It involves very different considerations from the case at bar.

Connolly vs. Union Sewer Pipe Company, 184 U. S. 540, involved an Illinois anti-trust statute exempting agricultural products and live stock under certain conditions, from its prohibitions. The Court held that it violated the equal protection of the laws clause of the constitution because of the classification which distinguished agricultural products and live stock from other articles, and the court said, just as the appellant has been urging upon the court in the case at bar:

"that classification must always rest upon some

difference which bears a reasonable and just relation to the Act, in respect to which the classification is proposed."

The Act in respect to which the classification was proposed in that case had for its purpose the prevention of combinations and agreements, or in other words, conspiracies intended to enhance prices, restrict production and to limit competition. No article of commerce and especially articles of food necessary for the sustenance of life could be properly distinguished from other necessary articles of commerce, and the court held that this classification vitiated the Act, by depriving some people of the equal protection of the laws, in other words, of the same exemptions which were secured to persons raising agricultural products and live stock. It is respectfully submitted that this case lays down the rule as to the test to be applied to a classification which sustains the position of the appellant in the case at bar, in which the classification of articles of bedding does bear a very positive relation to the purposes of the Act.

Lawton vs. Steele, 152 U. S. 133 involved the validity of a New York statute declaring fishing nets used in violation of law, to be a nuisance, and providing for their summary destruction. The court sustained the constitutionality of the Act. There was no allegation that the Act deprived anyone of the equal protection of the laws, but it was contended that it violated the due process clause, and the court said in sustaining the Act, "the extent and limits of what is known as the police power have been a fruitful subject of discussion in the appellate courts of nearly every state in the Union. It is universally conceded to include everything essential to the public health, safety and morals, and to justify the destruction or abatement by summary proceedings of whatever may be regarded as a public

nuisance. * * * The state may interfere wherever the public interests demand it, and in this particular, a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests. The preservation of game and fish, however, has always been treated within the domain of the police power. * * * If the object to be accomplished is conducive to the public interest, it (the legislature) may exercise a large liberty of choice in the means employed."

Burns Baking Co. vs. Bryan, 264 U. S. 504, involved a Nebraska statute prohibiting the sale of bread by loaves of weights other than fixed by the statute, but allowed a tolerance in excess of such specified weights of two ounces per pound, and required that the specified weights shall be the average weight of not less than 25 loaves, and that such average shall not be more than the maximum nor less than the minimum prescribed. That the Act related to a proper subject matter, and had a proper purpose was recognized by the court, and admitted by the parties, and the Act was sustained except for the purpose of providing for the average weight of twenty-five loaves. The court held that this provision was not calculated to effectuate the purpose of the Act, which was to protect the public against imposition and fraud by short weights. It is apparent that the provision as to weight, together with an allowance for tolerance was the only provisions of the Act which bore any relation to the purpose of the Act, and this part was sustained. It is interesting to note, however, that even in this case Mr. Justice Brandeis, with the concurrence of Mr. Justice Holmes, filed a dissenting opinion, holding that even the average weight provision was so related to the proper purposes which led to the enactment as to be a proper exercise of the police power.

Conclusion

The appellant believes that the court below entirely misapprehended the test to be applied to the statute under consideration and approached and considered the case from the legislative rather than the judicial viewpoint. To argue the merit of this legislation or the efficacy of the remedies invoked by the legislation would be to adopt the error into which the court has already fallen. That appeal must be made to either the legislature itself or to the state's electorate. The judicial question under the due process clause is as to whether or not the Pennsylvania Statute of June 14, 1923, is a proper exercise of the police power. If it was enacted for a proper purpose and if the subject matter bears a reasonable relation to that purpose, it is due process. Both of these propositions are admitted by the court below and neither is denied by the appellee. The remedy adopted by the legislature is attacked by the appellee and denounced by the court. That it has a relation to the purposes of the act is not denied, but it is complained that it is too drastic and that the public health could be adequately protected by a milder method. The court below does not even suggest a milder method by which the public could be secured against fraud and deceit and the appellee has failed to propose substitute. Had the court have recognized that the protection of the public against fraud was as proper a purpose for the regulation of the use of shoddy as the protection of the public health, it would undoubtedly have realized that its criticism of the act concerned the legislative question of remedies rather than the judicial question of the mere existence of a relation between the subject matter and the purpose. We deny that the due process clause is violated.

If, therefore, this act does not deprive any person of due process of law, it cannot deny to any person the

equal protection of the laws unless the classification of articles of bedding is arbitrary and discriminatory and omits some article that beyond all reasonable doubt, should have been included. All persons covered by the statute who are similarly situated are treated alike under like circumstances and conditions. Consequently, the only test for judicial determination is that of classification. If the classification prescribed rests upon some difference which bears a reasonable relation to the act, it is a reasonable classification. It may be an unwise classification, which we deny in this case, yet if a reasonable relation to the act exists it cannot violate the equal protection of the laws clause of the 14th Amendment.

We therefore submit that the Pennsylvania Act of June 14, 1923, is a proper exercise of the police power of the state and that the judgment of the United States District Court for the Western District of Pennsylvania should be reversed and the bill of the appellee should be dismissed.

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Exhibit "A"

No. 314.

AN ACT

Relating to mattresses, pillows, bolsters, feather beds, comfortables, cushions, and upholstered furniture; regulating the making, remaking, renovating, sterilizing, disinfecting, sale, leasing, delivering, and consigning thereof, and the possession thereof with intent to sell, lease, deliver, or consign.

Section 1. Be it enacted, &c., That the word "Mattress" shall mean any quilted pad, mattress, mattress pad mattress protector, bunk quilt, or box spring, stuffed or filled with excelsior, straw, hay, grass, corn husks, moss, fibre, cotton, wool, hair, jute, kapok, or other soft material, to be used on a couch or other bed for sleeping or reclining purposes.

The words "pillow," "bolster," or "feather bed" shall mean any bag, case, or covering made of cotton or other textile material, and stuffed or filled with excelsior, straw, hay, grass, corn husks, moss, fibre, cotton, wool, hair, jute, feathers, feather down, kapok, or other soft material, to be used on a bed, couch, divan, sofa, lounge, or other article of upholstered furniture for sleeping or reclining purposes.

The word "comfortable" shall mean any cover, quilt, or quilted article made of cotton or other textile material, and stuffed or filled with fibre, cotton, wool, hair, jute, feathers, feather down, kapok, or other soft material, to be used for sitting, resting, or reclining purposes.

The word "cushion" shall mean any bag or case made of leather, cotton, or other textile materials, and stuffed or filled with excelsior, hay, grass, corn husks,

tow, moss, fibre, cotton, wool, hair, feathers, feather down, kapok, or other soft material, to be used on a hammock, chair, couch, divan, sofa, lounge, or other article of furniture for reclining, resting, or sleeping purposes.

The words "upholstered furniture" shall mean any article of furniture stuffed or filled with excelsior, straw, hay, grass, corn husks, tow, moss, fibre, cotton, wool, hair, jute, feathers, feather down, kapok, or other soft material, to be used for sitting, resting, or reclining purposes.

The word "new," as used in this act, shall mean any material or article which has not been previously manufactured or used for any purpose.

The word "secondhand" shall mean any material or article of which prior use has been made.

The word "shoddy" shall mean any material which has been spun into yarn, knit or woven into fabric, and subsequently cut up, torn up, broken up, or ground up.

The word "person," as used herein, shall include persons, corporations copartnerships, and associations.

Words used in the singular number shall include the plural; and the plural, the singular.

Section 2. No person shall employ or use in the making, remaking, or renovating of any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture: (a) Any material known as "shoddy," or any fabric or material from which "shoddy" is constructed; (b) any secondhand material, unless, since last used, such secondhand material has been thoroughly sterilized and disinfected by a reasonable process approved by the Commissioner of Labor and Industry; (c) any new or secondhand feathers,

unless such new or secondhand feathers have been sterilized and disinfected by a reasonable process approved by the Commissioner of Labor and Industry.

Section 3. Any person engaged in the making, remaking or renovating of any mattress, pillow, bolster, comfortable, cushion, or article of upholstered furniture in which secondhand material is used, or in the making of any new or secondhand feather or down filled article, or engaged in sterilizing and disinfecting any material, feathers, or article coming under the provisions of this act, shall submit to the Commissioner of Labor and Industry for approval a reasonable and effective process, together with duplicate plans of apparatus or auxiliary devices, for the sterilization and disinfection of secondhand material, feathers, and secondhand articles herein enumerated.

Upon the approval of such process for sterilization and disinfection, a numbered permit for its use shall be issued to the applicant by the commissioner. Such permit shall expire one year from date of approval. Every person to whom a permit has been issued, shall keep such permit conspicuously posted in his office or place of business. Refusal to display such permit in accordance with this act shall be sufficient reason to revoke and forfeit the permit.

Nothing in this act shall prevent any person engaged in the making, remaking, renovating or sale of any article herein described, which requires sterilizing and disinfecting under the provisions hereof, from having such sterilizing and disinfecting performed by any person to whom a permit for such purposes has been issued, providing the number of the permit shall appear in the statement on the tag attached to the article.

Section 4. All places where any mattress, pillow, bolster, bed, comfortable, cushion, or article of uphol-

stered furniture is made, remade, or renovated, or where materials for the herein named articles are prepared, or establishment where said articles are offered for sale, or are in possession of any person with intent to sell, deliver, or consign them, or establishment where sterilizing and disinfecting is performed, shall be subject to inspection by the Department of Labor and Industry to ascertain whether the materials and the finished articles herein enumerated conform to the requirements of this act.

Section 5. No person shall sell, lease, offer to sell or lease, or deliver or consign in sale or lease, or have in his possession with intent to sell, lease, deliver, or consign in sale or lease, (a) any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture, made, remade, or renovated in violation of this act; (b) any secondhand mattress, pillow, bolster, feather bed, or comfortable, unless, since last used, it has been thoroughly sterilized and disinfected by a reasonable process approved by the Commissioner of Labor and Industry.

Section 6. Each and every mattress or article covered by this act, other than a feather or down filled pillow, bolster, bed comfortable, cushion, or any secondhand article of upholstered furniture, shall bear securely attached thereto and visible on the outside covering a tag, to be procured from the Department of Labor and Industry, upon which shall be plainly and indelibly stamped or printed, in English, (a) a statement showing whether the materials used in filling said mattress or article are wholly new or secondhand or partly secondhand; (b) the name and address of maker and vendor; (c) the word secondhand upon any article of which prior use has been made; (d) the number of the permit issued for sterilizing and disinfecting.

Each and every pillow or other article covered by this act, in which feathers or down are used, shall bear securely attached thereto and visible on the outside covering a tag, to be procured from the Department of Labor and Industry, upon which shall be plainly and indelibly stamped or printed, in English, (a) statement that the feathers or down used in filling have been sterilized and disinfected in accordance with this act; (b) the number of the permit issued for sterilizing and disinfecting the feathers or down; (c) the name and address of maker and vendor; (d) the word secondhand upon a feather or down filled article of which prior use has been made; (e) the number of permit issued for sterilizing and disinfecting.

Each and every article of upholstered furniture of which prior use has been made shall bear securely attached thereto and visible on the outside covering a tag, to be procured from the Department of Labor and Industry, upon which shall be plainly and indelibly stamped or printed, in English, the word secondhand, together with the name and address of the vendor.

No additional information shall be contained in said statements.

Section 7. The statement on the tag required by this act to be attached to any article covered by this act shall be not less than three by four and a half inches in size.

The tag, with the replica of the seal of this Commonwealth printed thereon, shall be in the following form:

OFFICIAL STATEMENT.

Materials used in filling.....

Made by .....

Vendor .....

Address .....

This article is made in compliance with the act of Assembly of Pennsylvania, approved.....

.....

Permit number .....

It shall be unlawful for any person to imitate, counterfeit, sell, or have in his possession any imitated or counterfeited tag required under the provisions of this act.

It shall be unlawful to use, exclusively, in the said statement concerning any mattress, pillow, bolster, comfortable, cushion, or article of upholstered furnitrue the word "Felt," or words of like import, if any other than garnetted materials are used in filling, or the words "Curled Hair," or words of like import, if other than curled hair is used in filling.

It shall be unlawful to stamp or print on a tag any misleading term or designation, or to remove, deface, alter, or in any manner attempt the same, or cause to be removed, defaced, or altered, any statement on a tag placed upon any article included in the provisions of this act.

Section 8. The Commissioner of Labor and Industry is hereby authorized to contract for the printing of the tags required by the provisions of this act. The commissioner shall, upon the application to him by any person, furnish tags, with the name and address printed thereon of the maker, remaker, or renovator of any article covered by this act, in quantities of not less than one thousand tags, for which the applicant shall pay ten dollars for each one thousand tags.

All fees collected under the provisions of this act

shall be paid to the Commissioner of Labor and Industry, and, when so collected and paid, shall thereafter be by the Commissioner of Labor and Industry paid into the State Treasury.

The State Treasurer shall establish a separate fund, to be known as the Bedding and Upholstery Fund, into which all moneys collected under the provisions of this act shall be paid, and from which all expenditures necessary in carrying into effect the provisions of this act shall be paid.

All moneys in the Bedding and Upholstery Fund, from time to time, are hereby specifically appropriated to the Department of Labor and Industry for the purpose of carrying into effect the provisions of this act, and for the payment of salaries and expenses of inspectors, employes, and for research, or any other necessary expenses of the Department of Labor and Industry connected with the enforcement of this act.

The money in the Bedding and Upholstery Fund shall be paid to the use of the Department of Labor and Industry, in advance, from time to time, as the same is required, upon requisition by the Commissioner of Labor and Industry.

The Auditor General shall, upon requisition, from time to time, of the Commissioner of Labor and Industry and the proper accounting for moneys already advanced from the fund, draw his warrant upon the State Treasurer for the amount specified in such requisition not exceeding, however, the amount in such fund available for the purposes herein specified at the time such requisition is made.

Section 9. The Department of Labor and Industry, through its officers and employes, is hereby charged with the administration and enforcement of this act.

Section 10. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof in a summary action before a magistrate, alderman, or justice of the peace, shall be sentenced to pay a fine of not less than ten dollars and not more than fifty dollars for each offense, and, in default of the payment of such fine, to undergo an imprisonment of not less than ten days for each separate offense: Provided, That the total term of imprisonment at one time for additional offenses shall not exceed six months.

Each mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture, made, remade, or renovated, sold, offered for sale, delivered, consigned, or possessed with intent to sell, deliver, or consign, contrary to the provisions hereof, shall constitute a separate offense.

Each imitated or counterfeited tag made, used, sold, offered for sale, delivered, or consigned, contrary to the provisions hereof, shall constitute a separate offense.

The commissioner may revoke any permit issued under the provisions of this act if the person to whom the permit was issued has violated any provisions of this act or the rules or regulations established thereunder.

Section 11. It is the intention of the General Assembly that, if this act cannot take effect in its entirety because of the judgment of any court of competent jurisdiction holding unconstitutional any part or parts hereof, the remaining provisions of the act shall be given full force and effect as completely as if the part or parts held unconstitutional had not been included herein.

Section 12. The following acts, which this act is to

replace: Act number 90, approved May first, one thousand nine hundred and thirteen (Pamphlet Laws, one hundred and thirty-four), entitled "An act defining mattresses; regulating the making, remaking, and sale thereof; prohibiting the use of unsanitary and unhealthy materials therein; requiring that the materials used shall be accurately described, and prescribing the manner in which mattresses shall be labeled; providing for the enforcement of the provisions of this act; making certain acts criminal, and punishing the same; imposing certain duties upon the Commissioner of Health and the Chief Factory Inspector; and repealing legislation inconsistent with this act," which was amended by act, two hundred and nineteen, approved May fourteenth, one thousand nine hundred and fifteen (Pamphlet Laws, five hundred and ten), and all other acts or parts of acts inconsistent herewith, or replaced hereby, are repealed.

Section 13. This act shall take effect January first, one thousand nine hundred and twenty-four.

APPROVED—The 14th day of June, A. D. 1923.

GIFFORD PINCHOT.

The foregoing is a true and correct copy of the Act of the General Assembly No. 314.

CLYDE L. KING,

Secretary of the Commonwealth.

Exhibit "B"

Memoranda of Legislative Acts Prohibiting the Use of Shoddy

ALABAMA

The Alabama State, approved August 9th, 1915, provides:

"Section 8.—No person within this State, shall use, either in whole or in part, in the manufacture of mattresses or comforts, any cotton, or other materials, which has been used for any purpose whatever."

INDIANA

The Indiana Act of 1917 provides, inter alia, as follows:

"Section 1. No person, firm or corporation, by himself or his agents, servants or employees, shall employ or use in the making, re-making, or renovating of any mattress: (a) Any material of any kind that has been used in or formed a part of, any mattress used in or about any public or private hospital, or institution for the treatment of persons suffering from disease, or for or about any person having any infectious or contagious disease; (b) Any material known as 'shoddy', made in whole or in part from old or worn clothing, carpets or other fabric, or material previously used, or any other fabric or material from which 'shoddy' is constructed. * * *"

IOWA

The Iowa Statute of April 16th, 1923, provides:

"Section 2. It shall be unlawful for any manufacturer or his agent to sell, offer or consign for sale, or have in his possession with intent to sell, offer or con-

sign for sale, any mattress or comfort as herein defined, containing any infectious, insanitary or unhealthful material, or any other material previously used or not entirely new, sterilized feathers excepted, and unless the same be labelled as follows, to wit: to each of said articles there shall be attached upon the outside thereof, a cloth, or cloth-lined label not less than two by three inches in size, upon which shall be legibly written or printed, in the English language, in letters not less than one-eighth of an inch in height, a description of the materials used in the filling, with the name and address of the maker of such mattress or comfort. The sewing of one edge of said label securely to said article shall be sufficient.

If all of the material used in making said articles shall not have been previously used, and be new, the words 'Manufactured of New Material' shall appear upon said label."

KENTUCKY

The Kentucky Statute of April, 1920, provides:

"Section 2. Part (A). No person or corporation, by himself or by his agents, servants or employees, shall employ or use in the making, remaking or renovating of any mattress, any material of any kind that has been used in or has formed a part of, any mattress used in or about any public or private hospital, or institution for the treatment of persons suffering from disease, or for or about any person having an infectious or contagious disease; any material, not otherwise prohibited in this act, of which prior use has been made; unless any and all of said material has been thoroughly sterilized, and disinfected by a reasonable process, approved by the board of health of the city or town where said mattress is made, remade, or renovated.

Part (B). The use of shoddy made from second hand materials, jute, old comforts, pads or mattresses in the manufacture of new mattresses to be offered for sale as such is here prohibited."

LOUISIANA

The Louisiana Act, approved July 10th, 1918, provides:

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, that no persons, firms or corporation shall use, either in whole or in part, in the making of any mattresses, quilts or bed comforters any second hand cotton, cotton felt, hair, wool, shoddy, feathers, excelsior or moss or any other soft material, which has been made second hand by use about the person; nor shall any person, firm or corporation sell or offer to expose for sale, or be in the possession of with intent to sell, or deliver any mattress, quilt, pillows or bed comforters in which has been used in the making, either in whole or in part, any second hand cotton, cotton felt, hair, wool, shoddy, feathers, excelsior or moss or any other soft material, which has been made second hand by a previous use on or about the person."

MARYLAND

Section "B" of Section 51 of the Code of Public General Laws of Maryland, approved April 9th, 192[illegible], is as follows:

"(B). No person shall employ or use in the making, remaking, or renovating of any mattress, pillow, bolster, feather bed or comfortable (a) Any material known as 'shoddy,' or any fabric or material from which 'shoddy' is constructed; (b) any second hand material, unless, since last used, such second hand material has

been thoroughly sterilized and disinfected by a reasonable process approved by the Director of Health; (c) any new or second hand feathers, unless such new or second hand feathers have been sterilized and disinfected by a reasonable process approved by the Director of Health."

MISSOURI

Section 2 of the Act of the State of Missouri, approved May 26th, 1919, reads as follows:

"Section 2. No person or corporation, by himself or his agents, servants, or employees, shall employ or use in the making, remaking or renovating of any mattress:

(a) Any material of any kind that has been used in, or has formed a part of, any mattress used for or about any person having any infectious or contagious disease:

(b) Any material known as "shoddy,' and made in whole or in part from old or worn clothing, carpets or other fabrics, or material previously used, or any other fabric, or material from which shoddy is constructed."

MONTANA

The Statute of the State of Montana which became effective June 1st, 1915, provides as follows:

"Section 1. No person, firm or corporation shall, within the State, sell, Offer for Sale or Manufacture, what is commonly known as shoddy, or sell, offer for sale or manufacture mattresses, pillows, couches, couch pads or lounges containing shoddy in whole or in part.

"Section 2. The term 'shoddy' as used in this Act, shall include all materials made or manufactured of rags, wearing apparel, clothing, rags, carpets or blankets."

NORTH CAROLINA

Section 1 of the North Carolina Act, passed March 29th, 1923, defines bedding as meaning "any mattress, upholstered spring, comforter, pad, cushion or pillow designed and made for use in sleeping or reclining, except where the filling thereof consists exclusively of sterilized feathers", and Section 2 of that Act is as follows:

"Section 2. No person shall, in the making or remaking of any article of bedding as herein defined, use any material of any kind that has been used by or about any person having an infectious or contagious disease or has formed a part of any article of bedding which has been so used, or use in said manufacture any material known as 'shoddy' and consisting in whole or part, of old or worn clothing, carpets or other fabric, or material previously used, or use in said manufacture any other fabric or material from which shoddy is constructed."

NEW JERSEY

The New Jersey Act, approved March 4th, 1918, after defining in Section 1 the term "mattress" as meaning "any quilted pad, mattress, mattress pad, bunk quilt, or cushion stuffed or filled with wool, hair, or other soft material, except feathers, to be used on a couch or other bed for sleeping or reclining purposes." provides in Section 2 as follows:

"2. No person or corporation, by himself or his agents, servants, or employees, shall employ or use in the making, remaking or renovating of any mattress:

(a) Any material of any kind that has been used in, or has formed a part of, any mattress used for or about any person having any infectious or contagious disease;

(b) Any material known as 'shoddy,' and made in whole or in part from old or worn clothing, carpets or other fabric, or material previously used, or any other fabric or material from which shoddy is constructed.

(c) Any material, not otherwise prohibited by this act, of which prior use has been made, unless the said material has been thoroughly sterilized and disinfected by a reasonable process approved by the Department of Health of this State."

TENNESSEE

The Act of the State of Tennessee, approved March 26th, 1917, Section 5, provides:

"That the sale of any mattress used in any home, sanitarium, hospital or other place where there has been a contagious disease, is hereby expressly prohibited; and that said mattress or material therein contained shall be disposed of as directed by the inspector authorized to inspect mattresses under this act. And in no case shall the material be used in the reconstruction or making of mattresses for purpose of home, private or public use in any like capacity as may be intended in the manufacture of new mattresses.

The use of shoddy made from second hand materials, jute, old comforts, quilts, pads or mattresses or floor sweepings from a cotton mill, compress or railroad platforms in the manufacture of new mattresses to be offered for sale as such, is hereby expressly prohibited."

UTAH

The Utah Statute, passed March 12th, 1923, which defines bedding as meaning "any mattress, mattress pad, bed comforter, quilted pad, upholstered spring or pil-

low, except where the filling thereof consists exclusively of sterilized feathers." provides as follows:

"Section 6. No person, firm or corporation, by himself or by his agents, servants, or employees, shall sell or offer to sell, deliver, or consign or have in his or their possession with intent to sell, deliver or consign any mattress made of material known as "shoddy' made in whole or in part from old or worn clothing, carpets, jute, bags or burlap or other fabric or material from which 'shoddy' is constructed."

CITY OF SPOKANE

The municipal ordinance of the City of Spokane, Washington, enacted December 31st, 1923, Section 6, provides:

"Section 6. Waste and Shoddy Not to Be Used—Waste and shoddy shall not be used in the manufacture, remaking or renovation of mattresses or pillows."